

McCormick, Barstow, Sheppard,  
Wayte & Carruth LLP  
James P. Wagoner, #58553  
*jim.wagoner@mccormickbarstow.com*  
Lejf E. Knutson, #234203  
*lejf.knutson@mccormickbarstow.com*  
7647 North Fresno Street  
Fresno, California 93720  
Telephone: (559) 433-1300  
Facsimile: (559) 433-2300

Attorneys for Plaintiffs FreshPac, LLC; Dayka &  
Hackett, LLC; Kool Kountry, LLC; Hackett Ag  
Management, Inc.; Fresh Select, LLC; and TM  
Diversified Management, Inc. on behalf of Dayka  
Ag Management, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

FRESHPAC, LLC; DAYKA & HACKETT,  
LLC; KOOL KOUNTRY, LLC; HACKETT  
AG MANAGEMENT, INC.; FRESH  
SELECT, LLC; and TM DIVERSIFIED  
MANAGEMENT, INC. on behalf of DAYKA  
AG MANAGEMENT, INC.,

Plaintiffs,

v.

AMRITSAR INSURANCE COMPANY; and  
Does 1-100.,

Defendant.

Case No. 1:23-cv-00678-JLT-BAM

**JOINT STIPULATION TO MODIFY  
BRIEFING SCHEDULE FOR MOTION  
TO DISMISS COMPLAINT (FRCP  
12(b)(3) AND [PROPOSED] ORDER**

Plaintiffs FRESHPAC, LLC; DAYKA & HACKETT, LLC; KOOL KOUNTRY, LLC;  
HACKETT AG MANAGEMENT, INC.; FRESH SELECT, LLC; and TM DIVERSIFIED  
MANAGEMENT, INC. on behalf of DAYKA AG MANAGEMENT, INC., and Defendant  
AMRITSAR INSURANCE COMPANY, by and through their counsel of record, hereby stipulate  
as follows:

///

///

1           1.       On July 21, 2023, Defendant filed the pending “Motion to Dismiss for Lack of  
2 Jurisdiction Pursuant to FRCP 12(b)(3), or, in the Alternative to Enforce a Contractual Forum  
3 Selection Provision and Change Venue Based on Forum Non Conveniens Pursuant to 28 U.S.C.  
4 §1404(b).” (See Docket No. 11 [hereinafter “Motion to Dismiss”].) Based on the Motion to  
5 Dismiss’ filing date, the deadline for Plaintiffs to file an Opposition to the Motion to Dismiss was  
6 August 4, 2023. (See E.D.Cal. Local Rule 230(c).)

7           2.       As set forth and explained by the accompanying Declaration of Marisela Taylor,  
8 counsel for Plaintiffs drafted and prepared an Opposition to the Motion to Dismiss which was  
9 complete and ready for filing by the August 4, 2023 deadline. (See Taylor Decl., ¶¶5-7.) However,  
10 due to clerical error and inadvertence, the Opposition was not filed until 3:33 a.m. on August 5,  
11 2023, thereby missing the August 4, 2023 filing deadline by approximately 3.5 hours. (*Id.*, ¶¶8-10;  
12 Docket no. 14; *see also* E.D.Cal. Local Rule 134(b) [generally requiring electronic filing of  
13 document “before midnight (Pacific Time) on that business day”].)

14           3.       Thereafter, on August 7, 2023 counsel for the parties telephonically conferred  
15 regarding the inadvertent late filing of the Opposition and determined that: (1) Defendant would not  
16 object to the inadvertent late filing of the Opposition; and (2) the parties would file a Joint  
17 Stipulation with the Court for an order to accommodate the Plaintiffs’ inadvertent late filing of the  
18 Opposition.

19           4.       Based on information and belief, the inadvertent late filing of the Opposition should  
20 cause no inconvenience to the Court since the Court has vacated the previously noticed Motion to  
21 Dismiss hearing date of August 28, 2023 and announced its intention to resolve the Motion to  
22 Dismiss “on the papers.” (See Docket no. 13 [July 26, 2023 Minute Order].)

23           5.       Therefore, Plaintiffs and Defendant by and through their respective counsel hereby  
24 stipulate that the Plaintiffs’ Opposition to the Motion to Dismiss be deemed to have been timely filed  
25 and respectfully request that this Court enter an Order to that effect.

26 ///

27 ///

28 ///

1 Dated: August 7, 2023

ADAMSKI MOROSKI MADDEN  
CUMBERLAND & GREEN LLP

2  
3 

4 JEFFREY A. HACKER  
5 Attorneys for Defendant AMRITSAR  
INSURANCE COMPANY

6  
7 Dated: August 7, 2023

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

8  
9 

10 JAMES P. WAGONER  
11 LEJF E. KNUTSON  
12 Attorneys for Plaintiffs FRESH PAC, LLC;  
13 DAYKA & HACKETT, LLC; KOOL KOUNTRY,  
14 LLC; HACKETT AG MANAGEMENT, INC.;  
FRESH SELECT, LLC; AND TM DIVERSIFIED  
MANAGEMENT, INC. ON BEHALF OF  
DAYKA AG MANAGEMENT, INC.

15  
16  
17 **ORDER**

18 Having considered the Parties' "Joint Stipulation To Modify Briefing Schedule For Motion  
19 To Dismiss Complaint (FRCP 12(b)(3))" the Court determines that there is good cause to excuse the  
20 Plaintiffs' inadvertent late filing of their Opposition to Defendants' Motion to Dismiss. Therefore,  
21 the Opposition will be deemed to have been timely filed under the applicable Local Rules.

22  
23 IT IS SO ORDERED.

24 Dated: **August 9, 2023**

25   
UNITED STATES DISTRICT JUDGE